

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE: . Case No. 23-10423-mkn
CASH CLOUD, INC., . Chapter 11
Debtor. . 300 Las Vegas Blvd. South
Las Vegas, NV 89101
Thursday, May 25, 2023
2:02 p.m.

TRANSCRIPT OF OST RE: APPLICATION MOTION FOR ENTRY OF AN ORDER
APPROVING KEY EMPLOYEE RETENTION PROGRAM AND GRANTING RELATED
RELIEF WITH PROPOSED ORDER FILED BY BRETT A. AXELROD ON BEHALF
OF CASH CLOUD, INC. [438];

STATUS HEARING RE: MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
FOURTH OMNIBUS MOTION FOR ENTRY OF ORDER APPROVING REJECTION OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO
11 U.S.C. 365(a) AND DISPOSAL OF CERTAIN PERSONAL PROPERTY
INCLUDING SURRENDER AND TERMINATION OF THE AUTOMATIC STAY
AND/OR ABANDONMENT WITH PROPOSED ORDER FILED BY
JEANETTE E. MCPHERSON ON BEHALF OF CASH CLOUD, INC. [355];
(CONTINUED)

BEFORE THE HONORABLE MIKE K. NAKAGAWA
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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TRANSCRIPT OF (CONTINUED):

STATUS HEARING RE: FIFTH MOTION TO REJECT LEASE OR EXECUTORY CONTRACT FIFTH OMNIBUS MOTION FOR ENTRY OF ORDER APPROVING REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. 365(a) AND DISPOSAL OF CERTAIN PERSONAL PROPERTY INCLUDING SURRENDER AND TERMINATION OF THE AUTOMATIC STAY AND/OR ABANDONMENT WITH PROPOSED ORDER FILED BY JEANETTE E. MCPHERSON ON BEHALF OF CASH CLOUD, INC. [358];

STATUS HEARING RE: SIXTH MOTION TO REJECT LEASE OR EXECUTORY CONTRACT SIXTH OMNIBUS MOTION FOR ENTRY OF ORDER APPROVING REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. 365(a) AND DISPOSAL OF CERTAIN PERSONAL PROPERTY INCLUDING SURRENDER AND TERMINATION OF THE AUTOMATIC STAY AND/OR ABANDONMENT WITH PROPOSED ORDER FILED BY JEANETTE E. MCPHERSON ON BEHALF OF CASH CLOUD, INC. [361];

STATUS HEARING RE: SEVENTH MOTION TO REJECT LEASE OR EXECUTORY CONTRACT SEVENTH OMNIBUS MOTION FOR ENTRY OF ORDER APPROVING REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO 11 U.S.C. 365(a) AND DISPOSAL OF CERTAIN PERSONAL PROPERTY INCLUDING SURRENDER AND TERMINATION OF THE AUTOMATIC STAY AND/OR ABANDONMENT WITH PROPOSED ORDER FILED BY JEANETTE E. MCPHERSON ON BEHALF OF CASH CLOUD, INC. [358];

TELEPHONIC APPEARANCES (Continued):

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TELEPHONIC APPEARANCES (Continued):

For the United States
Trustee:

Office of the U.S. Trustee
By: JUSTIN VALENCIA, ESQ.
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For the Official
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Creditors:

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1 (Proceedings commence at 2:02 p.m.)

2 THE COURT: First five matters on the two o'clock
3 calendar are in the Cash Cloud, Inc. proceeding. May I have
4 appearances for the record?

5 MR. KOFFROTH: Yes.

6 MS. MCPHERSON: Good afternoon, Your Honor. Jeanette
7 McPherson of Fox Rothschild on behalf of the debtor and debtor
8 in possession, appearing on behalf of -- or with respect to the
9 motions to reject that are pending. Thank you.

10 THE COURT: Okay. Thank you.

11 MR. KOFFROTH: And good afternoon, Your Honor.
12 Nicholas Koffroth, Fox Rothschild LLP, also on behalf of the
13 debtor, appearing on the KERP motion.

14 THE COURT: Okay.

15 MR. SHEA: Good afternoon, Your Honor. James Patrick
16 Shea of Shea Larsen appearing as Nevada counsel for Enigma
17 Securities. And with me on the line today is lead counsel,
18 Andrew Kissner from Morrison & Foerster.

19 THE COURT: Okay, thank you.

20 MR. VALENCIA: Justin Valencia, Department of Justice
21 appearing for the United States Trustee. Good afternoon, Your
22 Honor.

23 THE COURT: Good afternoon.

24 MS. LOTEMPPIO: Good afternoon, Your Honor. This is
25 Catherine LoTempio of Seward & Kissel on behalf of the Official



1 Committee of Unsecured Creditors, and I'm here with my
2 colleague Andrew Matott.

3 THE COURT: Okay. Thank you. Any other appearances
4 in the Cash Cloud matters?

5 Okay. There are none.

6 All right. The first item on the calendar is the
7 KERP motion or the KERP application that was brought on behalf
8 of the debtor. Mr. Koffroth, there was an interim order that
9 was entered as Docket Number 594. I believe that was filed on
10 or entered on May 23rd. Prior to that, there was the
11 supplemental McAlary declaration that was filed as Docket
12 Number 587. That was filed on May 19th. Have you had a chance
13 to further discuss this matter with the Office of the United
14 States Trustee?

15 MR. KOFFROTH: Yes, Your Honor, we have. And I would
16 have expected that a representative from the Trustee's office
17 would have been here. I mean, we -- as you noted, the
18 supplemental declaration did include, I think, some more
19 information that the Trustee was looking for. And I -- I'll
20 also note that, early on in the case, we had provided the
21 Trustee with an unredacted version of the employee list,
22 including direct reports --

23 THE COURT: Okay.

24 MR. KOFFROTH: -- which confirmed much of the
25 material that we had provided in our exhibit as well.



1 THE COURT: All right. Mr. Valencia, are you
2 appearing for the U.S. Trustee's office?

3 MR. VALENCIA: Yes, it's Justin Valencia appearing
4 for the United States Trustee, Your Honor.

5 THE COURT: Okay. All right. So, Mr. Koffroth, have
6 you spoken to either Mr. Day or Mr. Valencia about this?

7 MR. KOFFROTH: No, not just before this hearing, Your
8 Honor.

9 THE COURT: Okay. All right. Well, I've had a
10 chance, obviously, to review the supplement to the declaration
11 of Mr. McAlary. I reviewed the job title descriptions, the
12 explanation for the services that are actually provided. So
13 other than having reviewed those, was there any comment from
14 Mr. Valencia on behalf of the U.S. Trustee?

15 MR. VALENCIA: With respect, Your Honor, Justin
16 Valencia appearing for the United States Trustee. Our office
17 has reviewed that supplement filed at ECF 587, and this office
18 will go ahead and stand on its opposition and looks forward to
19 the Court's ruling.

20 THE COURT: Okay. All right. And you -- obviously,
21 you looked at the interim order as well. Is that correct?

22 MR. VALENCIA: Correct, Your Honor. Thank you.

23 THE COURT: Okay. All right. Thank you. Well,
24 anything else to add, Mr. Koffroth?

25 MR. KOFFROTH: No. Nothing more than other than what



1 is in the papers and the supplemental filings. I think we feel
2 pretty confident that the -- including the schedules and the
3 SOFA, confirming that there are only two insiders, demonstrates
4 that there really are no insiders here. And in any event, the
5 reply pretty thoroughly walks through the Dana factors and the
6 need for this kind of limited program that the debtor's
7 proposing.

8 THE COURT: Okay, thank you. All right, Counsel, the
9 Court has reviewed the original application itself which was
10 filed as Docket Number, I believe, 438, supported by the
11 declaration -- initial declaration of Mr. McAlary. It's Docket
12 Number 439. The Court also reviewed and considered the United
13 States Trustee's opposition filed at Docket Number 526. The
14 Court has reviewed the reply filed as Docket Number 556, which
15 reply was filed on behalf of the debtor in this case.

16 The Court entered the interim order after considering
17 arguments at the last hearing. That order was entered as
18 Docket Number 594. The Court waited for the supplemental
19 information to be provided by Mr. McAlary as was raised at the
20 last hearing. That supplemental information was filed in the
21 form of a declaration including a redacted exhibit of which the
22 Court saw the unredacted version. That declaration was filed
23 as Docket Number 587.

24 Having considered the arguments presented and the
25 responses filed, the Court is obviously aware of the concerns



1 raised by the U.S. Trustee's office. The Court does take those
2 concerns seriously. However, given the additional disclosures,
3 the Court does not believe that the concerns are significant to
4 warrant -- enough to warrant sustaining the objection to the
5 motion that was filed by the debtor. On that basis, the
6 opposition by the -- or the objection by the U.S. Trustee's
7 Office will be overruled. I'll grant the motion to approve the
8 key employee retention program, and therefore direct
9 Mr. Koffroth to prepare the appropriate order for granting the
10 application.

11 Mr. Valencia, do you want to sign off on the order?

12 MR. VALENCIA: Justin Valencia for the United States
13 Trustee. Yes, if you could send it to Jared Day and myself,
14 that would be appreciated. Thank you.

15 THE COURT: Oh, okay. All right then. Ms. LoTempio
16 or Ms. -- Mr. Matott, do you want to sign off on behalf of the
17 creditors' committee?

18 MS. LOTEMPPIO: Yes, Your Honor. We'll take a look.
19 Thank you.

20 THE COURT: Okay. All right. Mr. Shea or
21 Mr. Kissner, do you want to sign off on behalf of Enigma?

22 MR. KISSNER: That's okay, Your Honor. Thank you.

23 THE COURT: Okay. Signature's waived in that
24 respect. All right, Mr. Koffroth, go ahead and submit the
25 order.



1 MR. KOFFROTH: Thank you, Your Honor.

2 THE COURT: All right. Thank you. That gets us to
3 Items, I believe, 2, 3, 4, and 5 on the calendar. These are
4 the fourth, fifth, sixth, and I believe seventh omnibus motions
5 for orders approving rejection of executory contracts and
6 essentially the termination of the stay and/or abandonment of
7 property.

8 After the hearing initially last week, there was a
9 protocol adopted for some inquiry to be made through written
10 interrogatories by Enigma. The Court received oh, a few hours
11 ago, the -- a supplement to the Enigma omnibus objection to the
12 various motions. Shortly thereafter, the Court received the
13 debtor's reply that essentially has the responses by Mr. James
14 to the various interrogatories. Counsel approached this in a
15 manner to reduce the expenses rather than having it -- an
16 actual deposition and trying to get that before the Court. The
17 Court appreciates that cooperation.

18 It appears that the 12 questions were asked and there
19 were responses made by Mr. James. Was there anything else
20 that's part of the record in connection with these matters,
21 Ms. McPherson?

22 MS. MCPHERSON: No, Your Honor. That is the record.

23 THE COURT: Okay. And then Mr. Kissner, again, I --
24 it looks like you hit the 12 questions that you promised it
25 wouldn't exceed that, and that's what -- the questions that



1 you're asked and then you have seen the responses, obviously.
2 Is that correct?

3 MR. KISSNER: Thank you, Your Honor. Andrew Kisser,
4 Morrison & Foerster. We have seen the responses, and
5 understanding this isn't an evidentiary hearing, I think we
6 might quibble with some of them in terms of admissibility, but
7 I think we're willing to just proceed on this record.

8 THE COURT: Okay. And then if the -- you know,
9 again, these are responses to interrogatories. There were
10 objections as to some of the interrogatories, but nonetheless,
11 the responses were provided. If these were offered in the way
12 of an offer of proof, that if sworn in to testify, Mr. James
13 would testify and respond in kind to the same 12 questions,
14 would you be objecting to an offer of proof so that this
15 becomes part of the record as his testimony?

16 MR. KISSNER: We do not, Your Honor, in the sake of
17 moving this forward.

18 THE COURT: Okay. All right. That being the case,
19 this is the complete evidentiary record. Is there anything
20 else you want to add at this time?

21 MS. MCPHERSON: Your Honor --

22 MR. KISSNER: Oh, I was going to say I defer to the
23 debtor, but for our part, I probably have seven or eight
24 minutes of remarks planned so --

25 THE COURT: Okay. All right, Ms. McPherson, these --



1 all four of these are your -- essentially the debtor's motion.
2 Is there anything that you wanted to add in the way of argument
3 at this time?

4 MS. MCPHERSON: Your Honor, I don't want to
5 necessarily repeat what's in the motions. But just to hit the
6 high points, with regard to the motions, which essentially
7 are -- all seek the same relief, ss set forth in those motions,
8 we seek rejection of the various contracts and leases that are
9 set forth in each of the motion -- motions. And we believe,
10 based on the debtor's business judgment, that those contracts
11 and leases should be rejected. They're financially burdensome.
12 They don't provide benefit to the estate and all of its
13 creditors, not just Enigma. And we note that other than
14 Enigma, no other party has objected, including the unsecured
15 creditors committee, and also note that we haven't received a
16 request from any interested party or potential buyer to remove
17 any of the contracts or releases from the motions or withdraw
18 any of the motions.

19 We believe, again, that these contracts are
20 financially burdensome. There could be ongoing administrative
21 expenses that this debtor just cannot afford. So, Your Honor,
22 we would request that the rejection be granted and be granted
23 effective as of the motion date.

24 I believe the evidence shows that the debtor's
25 decision to reject these contracts and leases isn't manifestly



1 unreasonable. It's based on sound business judgment. It's not
2 based on bad faith or any kind of whim. So again, Your Honor,
3 we would request that the rejection be granted.

4 We also request stay relief because the elements for
5 stay relief are satisfied here, that the property -- the
6 remaining property is not necessary for reorganization and
7 there's little to no equity in this property.

8 And lastly, Your Honor, we would request that the
9 abandonment request be granted as of the motion date.
10 This property -- "the remaining property" as we refer to it in
11 the motions, is burdensome and of inconsequential value. The
12 debtor's determined that it's -- that it cannot afford to
13 remove this property and therefore would abandon and surrender
14 to the secured creditors.

15 In fact, I -- you know, Enigma has recognized that it
16 can pick up its property, but it really just doesn't want to.
17 But those aren't the standards under 554. It's the debtor's
18 decision which is virtually unfettered in that the property is
19 burdensome and it's not of benefit to the estate and all
20 creditors.

21 So for those reasons, Your Honor, we would request
22 the motions be granted and be granted effective as of the
23 filing date.

24 THE COURT: Okay.

25 MS. MCPHERSON: Thank you, Your Honor.



1 THE COURT: And Ms. McPherson, as far as effective as
2 of the filing date, you're referring to the filing date of the
3 motions. Is that correct?

4 MS. MCPHERSON: That's correct, Your Honor.

5 THE COURT: All right. And each of the four motions
6 that are the subject of today's hearings were filed on
7 March 23rd, 2023. Is that also correct?

8 MS. MCPHERSON: That's correct, Your Honor. Yes.
9 Thank you.

10 THE COURT: Okay. All right. And let me ask from
11 the Committee of unsecured creditors, Ms. LoTempio or
12 Mr. Matott, was there anything to add?

13 MS. LOTEMPPIO: Your Honor, Catherine LoTempio on
14 behalf -- of Seward & Kissel on behalf of the unsecured
15 creditors. Nothing to add, other than echoing what we said
16 last time. The Committee has no objection to entry of the
17 order and with the language that has been included in the
18 proposed order that was at the request of the Committee that
19 preserves rights vis-a-vis the secured lenders. Yeah, we have
20 no objection to entry of these orders.

21 THE COURT: Okay.

22 MS. LOTEMPPIO: Thank you.

23 THE COURT: All right, thank you. All right,
24 Mr. Kissner, on behalf of Enigma Securities, you're maintaining
25 the opposition to each of the motions. Did you have anything



1 to add?

2 MR. KISSNER: Thank you, Your Honor. Andrew Kissner
3 of Morrison & Foerster on behalf of Enigma, and thanks for
4 having us back here this afternoon to discuss this. I have a
5 few remarks to make. I'd start by saying that, like
6 Ms. McPherson, I don't intend to repeat the arguments that are
7 set forth in our papers. I'm, of course, happy to answer any
8 questions that Your Honor may have about them, but I think and
9 I hope that they speak for themselves.

10 Instead, what I'd like to do right now is zoom out a
11 bit, talk about the big picture. This is a case where we have
12 a debtor with principal assets of a few thousand machines.
13 Now, some of those machines, they might be pretty valuable.
14 They're in good locations. They have favorable contract terms.
15 They make good revenue or they have some other type of (audible
16 interference) or je ne sais quoi that might make them desirable
17 to operate. And knock on wood, I don't want to jinx it, but
18 I'm hoping that, at a forthcoming auction for the debtor's
19 assets, these machines are going to fetch a hefty premium.

20 On the other hand, we have some machines that, for
21 one reason or another, may not be viewed as valuable, whether
22 that's due to economics, the condition of the machines, or
23 other reasons, or idiosyncrasies that are going to be unique to
24 a given buyer. For example, perhaps that buyer already has a
25 machine in the same geographic area so it doesn't really want



1 it. Or conversely, the machine's in a region that's not
2 strategically important to the operator. Whatever the case may
3 be, though, those machines, even if they're not strategically
4 important, they still have some intrinsic value to them. But
5 we recognize that they're probably not likely going to fetch
6 the same price and the best disposition of them is likely at a
7 bulk sale or in a liquidation.

8 So where are we? In just one week, there's going to
9 be an auction. There's going to be a winning bidder or
10 bidders, and there will finally be a definitive answer to the
11 question, the \$64,000 question as it were, which machines go in
12 which bucket. Until then, standing here today, the debtor may
13 think that it has a pretty good guess as to where things will
14 land, but for now it's just that, it's a guess. We don't know
15 for certain.

16 Thus debtor, nonetheless, contends that the motions
17 reflect a reasonable exercise of its business judgment. I'd
18 like to take a closer look at what they've proffered to support
19 that conclusion. So first we have the declarations of Chris
20 McAlary, which were filed at Docket Numbers 356, 359, 362, and
21 365. And they're all substantially identical. And the debtor
22 relies on each of them to substantiate its decision to reject
23 the leases and abandon the machines.

24 But if you look at those declarations, beyond giving
25 a general background of the debtor's business and providing



1 some illustrative lease terms, all they really say -- and I'm
2 in Paragraph 10 and 11 of these declarations, if you want to
3 follow along. All they say is that if the debtor determines to
4 surrender the machine, then it will be because the machines are
5 quote, "not necessary to the organization" or quote, "the
6 debtor lacks equity in them." And that, in that case, this
7 decision would be an exercise of sound business judgment. So
8 these statements, they're conclusory and they're really
9 conditional to the point of meaninglessness because they don't
10 provide any insight as to the debtor's determination with
11 respect to any particular machine.

12 Now to its credit, the debtor does provide some
13 additional color through the various declarations and testimony
14 of Mr. James, which were submitted at Docket Numbers 550, 571,
15 591. As I mentioned at the start of the hearing, I think much
16 of this testimony, particularly as originally propounded by the
17 debtor, it lacks foundation, it constituted hearsay, or was
18 otherwise inadmissible. But for the sake of expediency and
19 moving on with these cases, we're just going to accept it at
20 face value.

21 And if you accept that testimony at face value, all
22 it tells us is the following things: First, that Mr. James or
23 maybe his colleagues at Province, they've spoken to some
24 parties that might be interested in some of the debtor's
25 assets. We're told there's apparently about 40 of those



1 parties, but we don't know how many that he's spoken to because
2 he, quote, "did not specifically track" end quote "them". And
3 that's from Docket 550, Paragraph 6; Docket 599, Responses 1
4 and 2.

5 Second, we know that some unknown subset of these
6 interested parties, apparently they were all, quote, "qualified
7 bidders that have previously submitted a term sheet." Well
8 those parties have apparently expressed a desire to reduce the
9 debtor's footprint. But the debtor won't tell us how many
10 parties there are, citing confidentiality concerns, and we
11 don't know by how much any of these parties want to reduce the
12 footprint. And that's all from Docket Number 599 which is
13 (audio interference) 7.

14 Third, we know the bid deadline is not until next
15 week. We know the debtor is willing to close more than one
16 transaction for its assets if it needs to. And we know that
17 today at least two liquidators have submitted indicative offers
18 to liquidate the debtor's rent fleet, which I would presume
19 includes machines correlated with rejected leases.

20 Now, the debtor, in the latest James testimony,
21 characterizes those offers as quote, "not real or not
22 material", but they're offers nonetheless and I'm not really
23 sure how they square with Ms. McPherson's assertion that
24 nobody's interested in these machines, but alas. What's more,
25 and at the risk of burying the lead, we know that RockItCoin --



1 who it appears from the debtor's testimony, seems to be one of
2 the leading bidders in this sale process. We know that
3 RockItCoin has expressed interest specifically in some of the
4 machines that are subject to the abandonment motion. And that
5 was all from Docket Number 599, Responses 5, 9, and 12.

6 Fourth and finally, we know the debtor has analyzed
7 these leases and it believes that rejection is warranted and
8 that any reasonable buyer would agree because those leases are
9 supposedly not profitable. So from that maybe uncontroversial
10 assertion, they've made the conclusion that abandonment of the
11 associated machines won't depress the sales price. And they
12 say that even though the economics of a lease say little about
13 the underlying machine's intrinsic value, and they say this
14 despite the fact that the bid deadline has not passed, and
15 despite the fact that there are multiple parties that have
16 expressed to the debtor interest in some or all of these
17 machines, and that there is an ability to close more than one
18 sale transaction. And that was from Docket Number 550,
19 Paragraph 5 and 599, Responses 5, 8, 9, and 12.

20 So if I were to summarize all this (audio
21 interference) I might say something like this: Even though
22 bids for the debtor's machines are not due until next week,
23 even though there have already been some indicative offers for
24 those machines, the debtors want to throw those machines away
25 today for no consideration at all. And so against this record,



1 it strikes me as a bit puzzling that the debtor believes that
2 rejection and abandonment, which comes at a critical juncture
3 in the case -- that they think this is a reasonable exercise of
4 their business judgment. And I think that it really stands in
5 sharp relief compared to the real prejudice that Enigma faces.

6 And while Ms. McPherson has characterized this
7 prejudice as parochial or unique to Enigma and inconsequential
8 to other creditors, let me be clear. Other creditors stand to
9 lose as well if these machines are prematurely abandoned for no
10 consideration, and that's because Enigma is a secured creditor
11 with a secured claim to the tune of nearly \$8 million. That
12 claim is secured by collateral that, at least according to the
13 debtor's testimony as part of the DIP motion, was just barely
14 enough to cover Enigma's claim. And so for every machine that
15 the estate throws away, if Enigma can't find a home for that
16 machine within its short exclusivity period to do so, or if the
17 machine can only be sold for scrap, then the abandonment of
18 that machine does little or nothing to offset Enigma's secured
19 claim. All it does is grow its deficiency claim, further
20 commuting recoveries to unsecured creditors, which I'm sure is
21 not something that Ms. LoTempo -- LoTempio, pardon me, or her
22 colleagues would want to see.

23 I'd also add that a repeatedly cited justification is
24 administrative expense burn, and yet at the same time, the
25 debtors are seeking nunc pro tunc relief. In other words, how



1 are there administrative expenses if these are all being
2 rejected retroactively?

3 So for each of the foregoing reasons, I would posit
4 that it's in everyone's best interests, not just Enigma's, to,
5 instead of engage in a series of ad hoc fire sales -- which I'm
6 sure the debtor and Mr. James and his colleagues would all
7 agree do not as a general proposition, tend to fetch the
8 highest and best price -- that we should instead conduct an
9 orderly liquidation of the debtor's fleet. And it sounds to me
10 from Mr. James's testimony that the debtor has received at
11 least two different proposals to date from liquidators who want
12 to do just that.

13 So with that in mind, Your Honor, Enigma's request,
14 it's pretty simple: Preserve the status quo just for a few
15 short weeks and we can revisit this issue after the auction. I
16 think that's really the only way that the parties can make a
17 truly informed decision as to what's really best for the
18 estate. Thank you.

19 THE COURT: Okay. Thank you. All right.
20 Ms. McPherson, response?

21 MS. MCPHERSON: Your Honor, first, I'd like to
22 know -- I don't believe that Enigma has any issue with the
23 request for rejection or the request for stay relief. It --
24 this all comes down to the issue of abandonment. And while
25 Enigma says, well, you know, we're just speculating, I believe



1 this is Enigma speculating and really just hoping -- it's kind
2 of a Hail Mary at this point -- that somebody will come along
3 and take their machines from them.

4 Enigma has the right to go and take their machines.
5 They just don't want to because they don't know what to do with
6 them, they don't have value. And that's really the standard
7 here, which is under 554, these machines don't have value to
8 the estate. A secured creditor shouldn't be and doesn't have
9 the authority to come forward and say to a debtor, you got to
10 keep hanging on to my collateral until I can decide whether I'm
11 going to come and pick it up, or just let you dispose of it.
12 That's not the standard under 554.

13 In this case, Your Honor, these motions were filed
14 because the debtor and its financial advisor have determined
15 that these contracts and leases don't have value to the estate
16 and there are no real indicators there's real -- meaning
17 parties who have expressed an interest in these leases and the
18 equipment, you know, other than what's been provided in the
19 documents -- that makes any difference. So for your -- for
20 that, Your Honor, there's the -- what Enigma is arguing is just
21 hope that somebody's going to come along.

22 RockItCoin has expressed that they would be
23 interested in some leases that are part of these motions, but
24 they have not asked us to withdraw the motions or take certain
25 locations off the motions because they're only partial.



1 There's only a partial interest. And they recognize that
2 they're going to have to speak with these parties outside of --
3 if the -- after the contracts are rejected, because they don't
4 want necessarily the whole contract.

5 So, Your Honor, in addition, these motions -- this
6 motion -- these motions have been pending, obviously, since
7 March. During this time, Enigma has had the opportunity to
8 address this issue. And that -- I believe that was the reason
9 why we stipulated to continue. And still nothing has come of
10 the disposal of the remaining property or kiosks. So, Your
11 Honor, during that time, nothing's happened, yet we're supposed
12 to believe that something's going to happen going forward.

13 The debtor intends on selling its assets shortly.
14 That will happen and what's left will be liquidated. So
15 there's really no reason why everything should continue to be
16 held up for Enigma who has rights to its collateral. It just
17 doesn't want to exercise them because it believes something
18 better is going to come along. And this is prejudicial to
19 other creditors. There is the risk that these are ongoing
20 expenses and they are administrative expenses, and the debtor
21 should not be held up simply because Enigma doesn't want to go
22 pick up its collateral.

23 So for those reasons, Your Honor, we believe that the
24 standards for rejection and the standards for abandonment have
25 been satisfied and that, again, a secured creditor who just has



1 hope that something might happen -- and it's not really based
2 on more than hope -- should not hold up motions that are
3 properly supported and properly based on the applicable
4 standards under the Bankruptcy Code and case law.

5 So for those reasons, Your Honor, we would request
6 that the motions be granted as set forth and in their entirety.
7 Thank you.

8 THE COURT: Okay.

9 MS. MCPHERSON: Oh, and one other thing, Your Honor,
10 I would like to note that Enigma is a consultation party so
11 they have been apprised of what has been going on in this case,
12 in addition. Thank you, Your Honor.

13 THE COURT: Okay. Thank you. All right.
14 Ms. LoTempio, on behalf of the creditors' committee, is there
15 anything else to add?

16 MS. LOTEMPPIO: Thanks, Your Honor. Catherine
17 LoTempio on behalf of the official committee. Nothing else to
18 add. As we stated, we have no objection and we defer to the
19 debtor's business judgment here.

20 THE COURT: Okay. Thank you.

21 MS. LOTEMPPIO: Thank you.

22 THE COURT: All right. Thank you. Mr. Valencia, any
23 input from the U.S. Trustee's office?

24 MR. VALENCIA: Justin Valencia appearing for the
25 United States Trustee. We're just here to monitor these last



1 few issues in this case, Your Honor.

2 THE COURT: Okay. Thank you. All right, Counsel,
3 the Court has considered each of the four separate motions.
4 The motions are supported by somewhat common declarations of
5 Mr. McAlary as the representative of the debtor in the matter.
6 They're also supported by the declarations of Mr. James as the
7 representative of the financial consultant. The Court has
8 reviewed all of the declarations. The Court has also paid
9 particular attention to the response that was filed this
10 afternoon that includes Mr. James's answers to the various
11 interrogatories that were submitted on behalf of Enigma last
12 week.

13 The Court notes that these motions were all commonly
14 filed on March 23 of 2023. The objection that was filed by
15 Enigma was, I believe, filed on May 4th. During the 42-day
16 period between that time, this is -- this was, is, and always
17 has been, a contested matter for which discovery was available
18 under Bankruptcy Rule 9014. During that period of time, if
19 there were some reservations about the business judgment
20 expressed by Mr. McAlary in the -- his original declarations,
21 and any reservations about the views undertaken by Mr. James,
22 they could have been explored more thoroughly, perhaps by
23 depositions or requests for an actual evidentiary hearing on
24 the motions, but those requests did not arise. There was the
25 desire to move the matter quickly, and that's why the



1 interrogatory approach was taken and counsel would be
2 congratulated for that.

3 Based on all of this information before the Court,
4 the Court understands, obviously, that there may be some
5 dispute or at least disagreement on the intrinsic value of
6 various of the machines versus their actual market value.
7 There is a concern that there may be some prejudice to Enigma
8 and others, but there's also a burden to the bankruptcy estate
9 itself that goes into the mix of how you exercise business
10 judgment in the particular case. One hopes that this doesn't
11 become an actual \$64,000 question, but once business judgment
12 is exercised, there are always risks involved.

13 In this particular proceeding, the Court has no
14 evidence before it that the risk undertaken and the business
15 judgment being exercised is being exercised in bad faith or for
16 a lack of good faith or anything other than the fact that some,
17 in certain circumstances, people may disagree. And that's the
18 situation before the Court.

19 So the Court has examined the motions, all four of
20 them, within the prism of the rejection of executory contracts
21 and leases under Section 365, the abandonment of property as
22 having inconsequential value or benefit of the estate under
23 Section 554, and also has considered whether cause would exist
24 to permit relief from stay under Section 362. Having looked at
25 the evidence and considering all of the arguments, the Court



1 concludes that the debtor has met its burden of proof by a
2 preponderance of evidence that rejection is appropriate under
3 Section 365 of the specific contracts and/or leases that are
4 specified in the motions themselves -- and each one of the
5 motions have different lists of those types of items -- that
6 abandonment also is appropriate if necessary, and that stay
7 relief is warranted.

8 For that reason, each of the four motions will be
9 granted. I will direct Ms. McPherson to prepare the
10 appropriate orders, incorporating by reference only, the
11 Court's oral ruling in this matter.

12 Mr. Kissner, do you want to sign off on the order?

13 MR. KISSNER: Sure. I'd love to take a look. Thank
14 you, Your Honor.

15 THE COURT: Okay. All right. Ms. LoTempio, do you
16 want to sign off on the order?

17 MS. LOTEMPPIO: Yes, Your Honor. Thank you.

18 THE COURT: Okay. Mr. Valencia, do you want to sign
19 off on the order?

20 MR. VALENCIA: Justin Valencia for the U.S. Trustee.
21 The U.S. Trustee will waive.

22 THE COURT: Okay. All right, Ms. McPherson, go ahead
23 and prepare this and submit the orders on Items 2, 3, 4, and 5
24 on today's calendar. All right?

25 MS. MCPHERSON: Thank you, Your Honor.



1 THE COURT: All right. Thank you. That concludes
2 the Cash Cloud matters.

3 (Proceedings concluded at 2:37 p.m.)

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16 C E R T I F I C A T I O N

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18 I, Teresa Saint-Amour, do hereby certify that the
19 foregoing is a correct transcript from the electronic sound
20 recording provided for transcription and prepared to the best
21 of my professional skills and ability.

22 

23

24 TERESA SAINT-AMOUR, AAERT NO. 2020 Dated: July 17, 2023

25 ACCESS TRANSCRIPTS, LLC

